IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 4256 of 2000(F)

PETITIONER:

SR.DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS
SRI.C.N.RADHAKRISHNAN

RESPONDENTS:
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1. SMT.P.K.BHAVANI, PLANTHODAM HOUSE,
IRUMPAYAM P.O., VAIKOM.

2. REGIONAL LABOUR COMMISSIONER (C)
KALTHIPARAMBIL ROAD, ERNAKULAM SOUTH, COCHIN-16

BY ADV. SRI.C.S.AJITH PRAKASH
SRI.ROBIN THOMAS PHILIP
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 4256 of 2000

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE CLAIM PETITION IN G.A.54/94 FILED BY THE 1ST RESPONDENT

EXT.P1- TYPED COPY OF -DO- -DO-

EXT.P2- TRUE COPY OF THE WRITTEN OBJECTION FILED BY THE PETITIONER HEREIN DATED 22.3.95 IN G.A.54/94

EXT.P3- TRUE COPY OF THE ORDERS DATED 27.6.95 IN G.A.54/94

EXT.P4- TRUE COPY OF the APPEAL G.A.25/95 FILED BEFORE OTHE 2ND RESPONDENT BY THE 1ST RESPONDENT

EXT.P5- TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONER HEREIN BEFORE THE 2ND RESPONDENT DATED 15.10.96 G.A.APPEAL 25/95

EXT.P6- TRUE COPY OF THE ORDERS OF THE 2ND RESPONDENT HEREIN IN G.A.APPEAL 25/95 DATED 7.12.1999

(TRUE COPY)

P.A TO JUDGE

S.SIRI JAGAN, J

O.P.4256/2000

Dated this the 2nd day of November, 2007

JUDGMENT

The matter arises under the Payment of Gratuity Act. The petitioner is the Railways. They are challenging orders of the authorities under the payment of Gratuity Act, by which petitioner was directed to pay gratuity to the first respondent for the period during which the first respondent worked as casual labourer.

2. The contention of the petitioner is that if this amount is paid there would be duplication in payment of the benefit while computing the period of gratuity. There was a series of writ petitions on the same point in respect of similarly placed casual labourers. One such writ petition is O.P.280/2000. The judgment in that writ petition reads as follows:-

> The challenge is on the orders passed under the Payment of Gratuity Act. One of the main contentions taken by the petitioner is that

> there is duplication in payment of the benefits while computing the period of gratuity. This writ petition is disposed of making it clear that it will be open to the petitioner to withhold the required amouont as per the impugned orders so as to avoid duplication.

3. In view of the said decision on identical facts, this writ petition is also to be disposed of in terms of that judgment. However, the learned counsel for the first respondent submits that the worker retired in the year 1991 and the Railways may be directed to compute the benefit due to the petitioner within a time frame. He particularly points out that the benefit due to the first respondent in O.P.280/2000 has not yet been disbursed even though the judgment was on 13.10.2006.

4. In the above circumstances, this writ petition is also disposed of making it clear that it would be open to the petitioner to withhold the required amounts as per the impugned orders so as to avoid duplication.

However, the Railways shall take a decision on the matter within a period of two months from the date of receipt of a copy of this judgment and intimate the first respondent the benefits due to her and also pay such benefits or recover the excess gratuity paid, in terms of the Division Bench decision in O.P.25021/2002, which is the basis of all other decisions on the subject.

S.SIRI JAGAN
Judge

mrcs